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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 LIVING IN JESUS TRUTH MINISTRY AND )  
9 :TOD-DEAN BRENBARGER, MINISTER OF )  
10 LIVING IN JESUS TRUTH MINISTRY )  
11 PUBLIC MINISTER FOR WORLD )  
12 PRAYERS ANSWERED AND DIPLOMATIC )  
13 CORP. MEMBER, )  
14 Plaintiffs, )  
15 v. )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )

3:12-cv-109-RCJ-VPC

**ORDER**

22 HON. MICHAEL WISE, JUDGE, OFFICE OF )  
23 ADMINISTRATIVE HEARINGS AND JAIME )  
24 WINCHELL, AGENT OF THE STATE OF )  
25 NEVADA DEPARTMENT OF MOTOR )  
VEHICLES AND PUBLIC SAFETY OF THE )  
COMPLIANCE ENFORCEMENT DIVISION )  
CASE NO. 2011-NI-67674; AND )  
CATHERINE CORTEZ MASTO, STATE OF )  
NEVADA ATTORNEY GENERAL, AND )  
DEPUTY ATTORNEY GENERAL AND ALL )  
OTHER STAFF OF THE OFFICE OF THE )  
ATTORNEY GENERAL, )  
Defendants. )

26 Currently before the Court are Defendants' motion to dismiss (#4) for failure to state a  
27 claim and Plaintiff's motion to enforce 42 U.S.C. § 1983 (#16). For the following reasons, the  
28 Court grants Defendants' motion to dismiss (#4) and denies as moot Plaintiff's motion to  
enforce § 1983 (#16).

**BACKGROUND**

27 Plaintiff Tod Dean Brenbarger is a resident of Minden, Nevada and also a minister for  
28 Living in Jesus Truth Ministry, a corporation and ministry. (Compl. (#1) at 3-4). He additionally

1 claims to be a citizen of World Prayers Answered, which he alleges is not only a corporation  
2 organized under Utah law, but a sovereign ecclesiastical state. (*Id.* at 3-4, 9).

3 On August 23, 2011, Brenbarger, as minister for Living in Jesus Truth Ministry, sought  
4 to register two vehicles to the church. (Compl. (#1) at 4). Brenbarger registered the vehicles  
5 using a post office box in Washoe County as the vehicle owner's physical address and a box  
6 at a mailbox store as the address for the location of the vehicles. (*Id.* at 2; Application (#4-1)).  
7 On August 31, 2011, Jaime Winchell—an agent of the Nevada Department of Motor  
8 Vehicles—called Brenbarger stating she had some questions regarding the addresses he  
9 listed on the vehicle registration forms. (Compl. (#1) at 5). Winchell apparently believed  
10 Brenbarger violated Nevada law by listing a post office box as the owner's physical address  
11 and a box at a mailbox store as the location of the vehicles. Nevada law requires that an  
12 application for registering a vehicle contain the owner's residential address and the location  
13 the vehicle is to be based, and it is a gross misdemeanor to use a fictitious address on the  
14 application. Nev. Rev. Stat. §§ 482.215(3), 482.545(5). Brenbarger informed Winchell that  
15 he had used those addresses because Living in Jesus Truth Ministry had not yet procured a  
16 building for its use. (Compl. (#1) at 5-6). On September 19, 2011, the Nevada Department  
17 of Motor Vehicles issued an administrative citation pursuant to NRS § 482.545(5) to  
18 Brenbarger for registering a vehicle under a fictitious address. (*Id.* at 2, 6).

19 An administrative hearing was then initiated before the Honorable Michael Wise ("Judge  
20 Wise"). (Compl. (#1) at 6-7). In December 2011, Brenbarger filed a motion challenging the  
21 administrative law court's jurisdiction, claiming that the court had no jurisdiction over him  
22 because he was a public minister of World Prayers Answered, which is a foreign ecclesiastical  
23 state. (*Id.*). Judge Wise informed Brenbarger that his pleading would not be treated as a  
24 motion, but as evidence, and that no ruling would be made on the pleading until a full hearing  
25 was held on the matter. (*Id.* at 7). Brenbarger apparently failed to appear at the administrative  
26 hearing held on March 1, 2012 and his fine was upheld. (Mot. to Dismiss (#4) at 3; Order of  
27 Default (#4-4)).

28

1 Brenbarger filed a pro se complaint<sup>1</sup> in this Court on February 24, 2012 against Judge  
 2 Wise, Jamie Winchell, Catherine Cortez Masto (the attorney general for the State of Nevada),  
 3 the deputy attorney general, and the entire staff of the office of the attorney general  
 4 (collectively “Defendants”), all in their official capacities. (Compl. (#1) at 1, 4). The causes of  
 5 action listed in the complaint allege (1) diplomatic immunity; (2) violation of due process; (3)  
 6 violation of 42 U.S.C. § 1983; and (4) violation of the First Amendment right of a church to not  
 7 have a fixed address. (*Id.* at 6-15). The complaint does not explicitly seek any injunctive or  
 8 declaratory relief, but does seek general damages in the amount of \$5,000,000, punitive  
 9 damages in the amount of \$25,000,000, prejudgment interest in the amount of \$15,000,000,  
 10 and post-judgment interest in the amount of \$15,000,000, along with various court filing fees.  
 11 (*Id.* at 15-16).

12 Defendants filed a motion to dismiss the complaint for failure to state a claim on March  
 13 19, 2012. (Mot. to Dismiss (#4)). Brenbarger filed an opposition to the motion to dismiss on  
 14 April 2, 2012 and Defendants filed a reply on April 4, 2012. (Opp’n to Mot. to Dismiss (#8);  
 15 Reply (#10)).

16 Brenbarger filed a motion to enforce § 1983 on May 21, 2012. (Mot. to Enforce § 1983  
 17 (#16)). It is unclear what action Brenbarger desires the Court to take by filing this motion, but  
 18 it restates many of the same arguments presented by Brenbarger in his opposition to the  
 19 motion to dismiss.<sup>2</sup>

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21 <sup>1</sup> The complaint also names Living in Jesus Truth Ministry as a plaintiff. (Compl. (#1)  
 22 at 1). Brenbarger is apparently attempting to represent both himself and Living in Jesus Truth  
 23 Ministry in this action, which he admits is a corporation. (*Id.* at 3). Corporations and other  
 24 unincorporated associations however are required to appear in court through licensed counsel.  
 25 *In re American West Airlines*, 40 F.3d 1058, 1059 (9th Cir. 1994). Living in Jesus Truth  
 26 Ministry consequently cannot be represented by Brenbarger in this action.

27 <sup>2</sup> The motion to enforce § 1983 also asserts that Chief Judge Robert C. Jones is biased  
 28 in this action because he has been named as a defendant in another action brought by other

## LEGAL STANDARD

2 The purpose of a Rule 12(b)(6) motion to dismiss for failure to state a claim is to test  
3 the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).  
4 “[T]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled  
5 to offer evidence to support the claims.” *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th  
6 Cir. 1997) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

To avoid a Rule 12(b)(6) dismissal, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although detailed factual allegations are not required, the factual allegations “must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. All well-pleaded factual allegations will be accepted as true and all reasonable inferences that may be drawn from the allegations must be construed in the light most favorable to the nonmoving party. *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003).

18        If the court grants a motion to dismiss a complaint, it must then decide whether to grant  
19 leave to amend. The court should freely give leave to amend when there is no “undue delay,  
20 bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing  
21 party by virtue of allowance of the amendment, [or] futility of amendment.” *Foman v. Davis*,  
22 371 U.S. 178, 182 (1962); see also FED. R. CIV. P. 15(a). Generally, leave to amend is only  
23 denied when it is clear that the deficiencies of the complaint cannot be cured by amendment.

25 World Prayers Answered citizens. (Mot. to Enforce § 1983 (#16) at 6). The Court however  
26 finds that the mere fact that Chief Judge Robert C. Jones has been named as one of many  
27 defendants in another action filed by another citizen of World Prayers Answered does not  
28 necessitate recusal in this case.

1 *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

2 **DISCUSSION**

3 **I. Defendants' Ability To Be Sued**

4 Brenbarger has pled several causes of action alleging deprivations of rights secured  
 5 by the Constitution and federal law against Defendants in their official capacities. Before  
 6 addressing Brenbarger's substantive claims, the Court must first determine to what extent  
 7 Defendants may be sued in federal court.

8 **A. Judge Wise**

9 Judge Wise is an administrative law judge for the State of Nevada. (Compl. (#1) at 4).  
 10 Brenbarger alleges in his complaint that Judge Wise denied him the right to challenge  
 11 jurisdiction by failing to treat his pleading in which he claimed diplomatic immunity as a motion,  
 12 but rather as evidence. (Compl. (#1) at 7, 9, 11). Defendants however contend that Judge  
 13 Wise is entitled to judicial immunity and therefore all claims against him should be dismissed.

14 Judicial immunity is a " 'sweeping form of immunity' for acts performed by judges that  
 15 relate to the 'judicial process.' " *In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002) (quoting  
 16 *Forrester v. White*, 484 U.S. 219, 225 (1988)). "This absolute immunity insulates judges from  
 17 charges of erroneous acts or irregular action, even when it is alleged that such action was  
 18 driven by malicious or corrupt motives . . . or when the exercise of judicial authority is 'flawed  
 19 by the commission of grave procedural errors.' " *Id.* (quoting *Stump v. Sparkman*, 435 U.S.  
 20 349, 359 (1978)). Absolute judicial immunity however is not reserved solely for judges, but  
 21 "extends to nonjudicial officers for 'all claims relating to the exercise of judicial functions.' " *Id.*  
 22 (quoting *Burns v. Reed*, 500 U.S. 478, 499 (1991) (Scalia, J., concurring in part and dissenting  
 23 in part)). "Individuals, when performing functions that are judicial in nature, or who have a  
 24 sufficiently close nexus to the adjudicative process, are entitled to a grant of absolute  
 25 quasi-judicial immunity." *Id.* at 948. The Supreme Court has acknowledged that  
 26 administrative law judges are afforded such absolute immunity, noting "[t]here can be little  
 27 doubt that the role of the modern federal hearing examiner or administrative law judge . . . is  
 28 'functionally comparable' to that of a judge." *Butz v. Economou*, 438 U.S. 478, 513 (1978); see

1 also *Cleavinger v. Saxner*, 474 U.S. 193, 200 (1985).

2 In the present matter, Judge Wise has been named as a defendant in this action due  
 3 to a decision he made in adjudicating Brenbarger 's dispute over the administrative citation.  
 4 Specifically, Brenbarger objects to Judge Wise's decision to treat his pleading in which he  
 5 claims diplomatic immunity as evidence, for choosing not to rule on the pleading until after a  
 6 full hearing on the matter, and because he intended to go forward to trial. (Compl. (#1) at 7).  
 7 Because Judge Wise is an administrative law judge being sued for decisions made while  
 8 performing a judicial function, he is entitled to absolute quasi-judicial immunity, and  
 9 accordingly he is dismissed from this action with prejudice.

10 **B. Attorney General Catherine Cortez Masto, the Deputy Attorney General,  
 and the Staff of the Office of the Attorney General**

11 Attorney General Catherine Cortez Masto, the deputy attorney general, and the entire  
 12 staff of the office of the attorney general are also named as defendants in this action.  
 13 However, the complaint fails to allege any wrongdoing on the part of any of these parties. The  
 14 complaint only mentions Attorney General Masto as a party in this action and does not claim  
 15 she or her staff participated in the administrative citation or any other alleged wrongful act in  
 16 this case. (See Compl. (#1) at 4). Accordingly, Attorney General Masto, the deputy attorney  
 17 general, and the staff of the office of the attorney general are dismissed from this action.

18 It appears that Brenbarger may have intended to sue the State of Nevada by naming  
 19 Attorney General Masto as a defendant as he seeks damages from the State of Nevada but  
 20 fails to name the State as a defendant. (Compl. (#1) at 15). The Eleventh Amendment  
 21 however states: "The Judicial power of the United States shall not be construed to extend to  
 22 any suit . . . against one of the United States by Citizens of another State." U.S. CONST.  
 23 amend. XI. This protection has been extended to protect a state from federal suits brought  
 24 by its own citizens. *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974); *Pittman v. Oregon*  
 25 *Employment Dep't*, 509 F.3d 1065, 1071 (9th Cir. 2001). A state may only be sued in federal  
 26 court when the state has explicitly waived its Eleventh Amendment immunity. *Alabama v.*  
 27 *Pugh*, 438 U.S. 781, 782 (1978). NRS § 41.031(3) clearly states that Nevada has not waived  
 28

1 its Eleventh Amendment immunity. Therefore even if Brenbarger intended to sue the State  
 2 of Nevada by suing the Attorney General, the State of Nevada would be entitled to immunity  
 3 under the Eleventh Amendment.<sup>3</sup>

4 **C. Jaime Winchell, Agent of the Nevada Department of Motor Vehicles**

5 Brenbarger has also named Jaime Winchell as a defendant in her official capacity as  
 6 an agent of the Nevada Department of Motor Vehicles. (Compl. (#1) at 1). However, suits  
 7 against an individual in their official capacity “generally represent only another way of pleading  
 8 an action against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473 U.S.  
 9 159, 165-66 (1985) (quoting *Monell v. New York City Dep’t of Social Servs.*, 436 U.S. 658,  
 10 690, n.55 (1978)). “It is not a suit against the official personally, for the real party in interest  
 11 is the entity.” *Id.* at 166. Because Winchell is being sued in her official capacity for issuing the  
 12 administrative citation, this action is treated as being against the Nevada Department of Motor  
 13 Vehicles.

14 Again, the Eleventh Amendment prohibits “federal courts from hearing suits brought  
 15 against an unconsenting state . . . by its own citizens, as well as by citizens of other states.”  
 16 *Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th Cir. 1991). This  
 17 protection bars suits not only against the state, but against state agencies. *P.R. Aqueduct &*  
 18 *Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993). Therefore the Eleventh  
 19 Amendment would normally prohibit the Department of Motor Vehicles from being named as  
 20 a defendant in this action. See *Linlor v. Breslow*, 2011 WL 6400377, at \*1 (D. Nev. 2011)  
 21 (holding that the Nevada Department of Motor Vehicles is a state agency and is thus immune  
 22 from suit under the Eleventh Amendment). An exception to the Eleventh Amendment however

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23  
 24 <sup>3</sup> Because all of Brenbarger’s substantive claims for constitutional violations are brought  
 25 under 42 U.S.C. § 1983, the State of Nevada would also be an improper defendant in this  
 26 action because the State is not a “person” as required by the statute. See *Will v. Michigan*  
 27 *Dep’t of State Police*, 491 U.S. 58, 71 (1989) (holding that a State is not a “person” under §  
 28 1983).

1 exists for a suit against a state officer which seeks prospective equitable relief to end  
 2 continuing violations of federal law, so long as the state officer being sued has some  
 3 connection with the enforcement of the act. *Culinary Workers Union, Local 226 v. Del Papa*,  
 4 200 F.3d 614, 619 (9th Cir. 1999); see also *Ex parte Young*, 209 U.S. 123, 157 (1908).

5 The complaint seeks millions of dollars in damages from Defendants and the State of  
 6 Nevada, and does not explicitly request prospective equitable relief. (Compl. (#1) at 15-16).  
 7 Brenbarger has however advanced claims against an officer of the Department of Motor  
 8 Vehicles charged with enforcing the vehicle registration requirements, alleging that the officer  
 9 is violating his First Amendment rights along with other federal law by doing so. (Compl. (#1)  
 10 at 6-15). Based on these accusations, it seems that Brenbarger is attempting to seek  
 11 injunctive relief to prevent the Department of Motor Vehicles from administering the citation  
 12 and to prevent the administrative law court from exercising jurisdiction over him. Therefore,  
 13 although Brenbarger has failed to state a claim against the Department of Motor Vehicles that  
 14 would yield monetary damages as a remedy, drawing all reasonable inferences in favor of the  
 15 non-moving party, Brenbarger may still potentially state a claim against the Department of  
 16 Motor Vehicles that would yield injunctive relief. The Court accordingly must next turn to the  
 17 substance of each of Brenbarger's claims.<sup>4</sup>

18 **II. Plaintiff's Claims for Deprivations of Rights Secured by the Constitution and  
 19 Federal Law**

20 Brenbarger has brought several claims under 42 U.S.C. § 1983 for violations of his  
 21 rights under federal law and the United States Constitution. Title 42 U.S.C. § 1983 provides  
 22 a remedy to individuals who have been deprived of federal rights by persons acting under

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23 <sup>4</sup> The Department of Motor Vehicles would also be prohibited from being named as a  
 24 defendant to Brenbarger's § 1983 claims because state agencies are not "persons" within the  
 25 meaning of the statute. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). However,  
 26 a state official may still be sued for injunctive relief under § 1983, *Doe v. Lawrence Livermore  
 27 Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997), and therefore the Court must still determine the  
 28 merit of Brenbarger's claims.

1 color of state law. See 42 U.S.C. § 1983. To sustain an action under § 1983, a plaintiff must  
 2 prove: (1) that a defendant acted under color of state law; and (2) the conduct deprived the  
 3 plaintiff of a right secured by the Constitution or laws of the United States. See *Johnson v.*  
 4 *Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997). Because Brenbarger has ultimately failed to  
 5 sufficiently plead that the Department of Motor Vehicles or any other Defendant engaged in  
 6 any conduct which deprived him of a right secured by the Constitution or laws of the United  
 7 States, he has failed to state a claim under any of his causes of action.

8           **A.     Public Minister's Immunity**

9           Brenbarger first alleges that Defendants deprived him of rights secured by the  
 10 Constitution<sup>5</sup> and federal law by issuing the administrative citation and allowing the  
 11 administrative law court to exercise jurisdiction over him despite his claim that he is entitled  
 12 to diplomatic immunity as a public minister of a foreign ecclesiastical state: World Prayers  
 13 Answered.

14           Brenbarger however has failed to state a claim for relief for numerous reasons. First,  
 15 he has failed to plausibly allege that World Prayers Answered is a sovereign ecclesiastical  
 16 state. Although Brenbarger claims World Prayers Answered is a foreign state, the Court is not  
 17 required to assume the truth of legal conclusions simply because they are cast in the form of  
 18 factual allegations. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir.  
 19 2003). Brenbarger has pled that World Prayers Answered is a corporation organized in Utah  
 20 on May 2, 2002. (Compl. (#1) at 9). Its world headquarters is located at 77 East Williams  
 21 Avenue, Fallon, Nevada 89406. (*Id.* at 3). Although World Prayers Answered apparently  
 22 notified the U.S. State Department that it claims to be a foreign ecclesiastical state on August  
 23

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24           <sup>5</sup> Brenbarger claims Defendants violated Article III, Section 2, Clause 2 of the  
 25 Constitution, which establishes that the Supreme Court has original jurisdiction over cases  
 26 affecting ambassadors and other public ministers and consuls. (Compl. (#1) at 6). It is  
 27 unclear why Brenbarger believes Defendants' actions in this case violate this jurisdictional  
 28 provision.

10, 2009, Brenbarger has failed to allege that the State Department chose to recognize World  
 2 Prayers Answered's sovereignty. (*Id.* at 10). Accordingly, Brenbarger has failed to plausibly  
 3 plead that he is a public minister of a foreign state.<sup>6</sup>

4 Furthermore, the controlling statute on diplomatic immunity is the Diplomatic Relations  
 5 Act of 1978, which incorporated the 1961 Vienna Convention on Diplomatic Relations. 22  
 6 U.S.C. §§ 254a-e. To properly claim diplomatic immunity “[i]t is enough that [the diplomat] has  
 7 requested immunity, that the State Department has recognized that the person for whom it  
 8 was requested is entitled to it, and that the Department's recognition has been communicated  
 9 to the court.” *Carrera v. Carrera*, 174 F.2d 496, 497 (D.C. Cir. 1949); see also *Gonzalez*  
 10 *Paredes v. Vila*, 479 F.Supp.2d 187, 192 (D.D.C. 2007). Courts have generally accepted the  
 11 views of the State Department as conclusive as to the fact of diplomatic status. *United States*  
 12 *v. Al-Hamdi*, 356 F.3d 564, 572 (4th Cir. 2004); *Abdulaziz v. Dade Cnty.*, 741 F.2d 1328, 1331  
 13 (11th Cir. 1984); *Carrera*, 174 F.2d at 497; see also *United States v. Stuart*, 489 U.S. 353, 369  
 14 (1989) (noting that the meaning attributed to treaty provisions by the government agency  
 15 charged with the negotiation and enforcement of the treaty are entitled to great weight).  
 16 Brenbarger has failed to properly allege or present any documentation from the State  
 17 Department that he is entitled to diplomatic immunity, and consequently has failed to state a  
 18 claim on this cause of action.

19 Because Brenbarger has failed to allege sufficient facts that would plausibly establish  
 20 that World Prayers Answered is a sovereign nation and that he is entitled to diplomatic  
 21 immunity, the Court dismisses this claim.

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 23         <sup>6</sup> The complaint does not seem to claim that Living in Jesus Truth Ministry is a foreign  
 24 state or that it is a political subdivision of World Prayers Answered. Any claim that Living in  
 25 Jesus Truth Ministry is a foreign state however would fail for the same reasons that the claim  
 26 World Prayers Answered is a foreign state ultimately lacks merit. Living in Jesus Truth  
 27 Ministry also cannot be a political subdivision of World Prayers Answered because World  
 28 Prayers Answered is not a foreign state.

## **B. Violation of Due Process**

Brenbarger also alleges that he was denied his due process rights under the Constitution because Judge Wise ignored or deferred his pre-trial pleading challenging the administrative law court's jurisdiction on immunity grounds. (Compl. (#1) at 9). This claim seems to be directly solely against Judge Wise. As Judge Wise is entitled to judicial immunity regarding decisions made while adjudicating this dispute, Brenbarger has failed to state a claim on this cause of action.

To the extent Brenbarger intends by this action to obtain injunctive relief against any other Defendant preventing the administrative law court or the Department of Motor Vehicles from exercising jurisdiction over him on diplomatic immunity grounds, such a claim would similarly fail. As stated above, Brenbarger has not sufficiently pled facts that support the reasonable inference that World Prayers Answered is a sovereign state or that Brenbarger is entitled to diplomatic immunity.<sup>7</sup>

Because Brenbarger has failed to state a claim under this cause of action, this claim is dismissed.

## C. First Amendment Violations

Brenbarger also alleges that the Department of Motor Vehicles violated both his own and Living in Truth Ministry's First Amendment right for a church to not have a fixed address.<sup>8</sup>

<sup>7</sup> Defendants also note that Brenbarger failed to exhaust the state remedies available to him. (Mot. to Dismiss (#4) at 10). He failed to appear at the hearing on the administrative citation and an order of default was accordingly entered against him. (Order of Default (#4-4)). Rather than appealing the decision, Brenbarger chose to file this complaint in federal court. Exhaustion of state remedies however is not a prerequisite to an action under § 1983. See *Patsy v. Bd. of Regents*, 457 U.S. 496, 500-01 (1982).

<sup>8</sup> Again, corporations and other unincorporated associations are required to appear in court through licensed counsel. *In re American West Airlines*, 40 F.3d 1058, 1059 (9th Cir. 1994). Brenbarger, who is a pro se litigant, thus cannot represent Living in Jesus Truth

(Compl. (#1) at 12-13). No such right explicitly exists under the First Amendment, and therefore to state a claim the alleged actions must violate either the Free Exercise Clause or the Establishment Clause of the First Amendment.

The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend I. Under Supreme Court precedent, a law burdening religious exercise generally does not violate the Free Exercise Clause if it is a “neutral law of general application.” *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1030-31 (9th Cir. 2004). If a law is neutral and generally applicable, it need only be rationally related to a legitimate government interest; if not, it must meet strict scrutiny. See *Stormans Inc. v. Selecky*, 586 F.3d 1109, 1129-30 (9th Cir. 2009). A law lacks neutrality if either the text or the operation of the law target a specific religious group or practice. *Id.* at 1130-31.

Brenbarger was issued an administrative citation for providing a fictitious address on applications for the registration of vehicles in violation of NRS § 482.545(5). (Compl. (#1) at 2; Administrative Citation (#4-3)). Under Nevada law, each application to register a vehicle must contain the owners residential address along with the location of where the vehicle is to be based. NEV. REV. STAT. § 482.215(3). It is unlawful for a registering party to list a fictitious address on the application. *Id.* § 482.545(5). These laws are clearly neutral and generally applicable regulations as they apply to all parties who wish to register a vehicle and do not discriminate based on religion. The text of the laws do not specifically target a religious group or practice, but simply require the registering party to provide physical addresses on applications for vehicle registration and make it unlawful for any person to use a false address on such applications. *Id.* §§ 482.215(3), 482.545(5). Brenbarger has also not alleged that the laws have been applied in manner that targets specific religious groups or practices. The laws therefore do not violate the Free Exercise Clause.

The laws furthermore do not violate the Establishment Clause. Pursuant to the

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Ministry in this action and cannot assert claims on its behalf.

1 Establishment Clause, the government “ ‘may not promote or affiliate itself with any religious  
 2 doctrine or organization, may not discriminate among persons on the basis of their religious  
 3 beliefs and practices, may not delegate a governmental power to a religious institution, and  
 4 may not involve itself too deeply in such an institution’s affairs.’ ” *Am. Jewish Congress v. City*  
 5 *of Beverly Hills*, 90 F.3d 379, 383 (9th Cir. 1996) (quoting *Cnty. of Allegheny v. ACLU*, 492  
 6 U.S. 573, 590-91 (1989)). To determine whether a law violates the Establishment Clause,  
 7 courts apply the *Lemon* test. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). Under the  
 8 *Lemon* test, governmental conduct does not violate the Establishment Clause if it (1) has a  
 9 secular purpose, (2) does not have as its principal or primary effect the advancement or  
 10 inhibition of religion, and (3) does not foster an excessive governmental entanglement with  
 11 religion. *Id.* The touchstone for the analysis “is the principle that the ‘First Amendment  
 12 mandates governmental neutrality between religion and religion, and between religion and  
 13 nonreligion.’ ” *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005) (quoting *Epperson v.*  
 14 *Arkansas*, 393 U.S. 97, 104 (1968)).

15 The registration requirements here have a secular purpose. These laws are intended  
 16 to ensure that a vehicle is associated with a residence for tax and emissions purposes and to  
 17 allow for the registered owner to be located in the event of an accident, among other  
 18 purposes. See, e.g., NEV. REV. STAT. §§ 14.070, 445B.795, 482.215(3)(c). The registration  
 19 requirements do nothing to advance or inhibit religion nor do they generate excessive  
 20 government entanglement with religion. The requirements apply to all registering parties  
 21 equally, both secular and religious, and do not require excessive government interference with  
 22 religious matters or the surveillance of religion. Brenbarger has accordingly failed to state a  
 23 claim for violations of the First Amendment.

24 As Brenbarger has failed to state a cause of action on any of his claims and because  
 25 granting leave to amend would be futile, Defendants’ motion to dismiss is hereby granted and  
 26 the complaint is dismissed with prejudice.

27 **III. Plaintiff’s Motion to Enforce § 1983**

28 Because the Court dismisses the complaint for failure to state a claim upon which relief

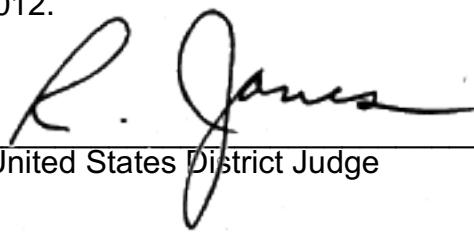
1 can be granted, Brenbarger's motion to enforce § 1983 is denied as moot.

2 **CONCLUSION**

3 For the foregoing reasons, IT IS ORDERED that Defendants' motion to dismiss (#4) is  
4 GRANTED and the complaint is hereby dismissed with prejudice.

5 IT IS FURTHER ORDERED that Plaintiff's motion to enforce § 1983 (#16) is DENIED  
6 as moot.

7 DATED: This 3rd day of August, 2012.

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11 United States District Judge  
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